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Chief Executive Officer

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July 6, 2016

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To: Supervisor Hilda L. Solis, Chair
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Supervisor Don Knabe
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From:

Sachi A. Hamai

Chief Executive Officer

A handwritten signature in dark ink, appearing to read "Sachi A. Hamai", is written over the printed name and title.

RESPONSE TO A MOTION BY SUPERVISOR ANTONOVICH ON THE LEGISLATIVE EFFORTS TO ELIMINATE OR RESTRUCTURE THE CALIFORNIA PUBLIC UTILITIES COMMISSION (SUPPLEMENTAL AGENDA ITEM NO. 47-C, MEETING OF FEBRUARY 9, 2016)

Executive Summary

On February 9, 2016, the Board directed this office to provide a report on legislation that would reexamine the role of the California Public Utilities Commission (CPUC). This memorandum provides a report on Governor Brown's announcement on June 27, 2016, of a reform package that would relocate certain CPUC responsibilities to other agencies and make logistical changes to improve the CPUC's ability to function.

Background

In response to concerns regarding the California Public Utilities Commission's ability to regulate the wide range of industries over which it has authority, exercise proper oversight of utilities, or act decisively to protect communities under the current system, Assembly Member Mike Gatto introduced a proposed Constitutional amendment (**ACA 11**) to remove the constitutional protections currently enjoyed by the CPUC and reassign regulation of industries unrelated to the CPUC's core functions to more appropriate State agencies.

ACA 11 (Gatto), which as amended on May 27, 2016, would have placed before the voters an initiative to authorize the Legislature to reallocate or reassign all or a portion of the functions of the CPUC to other State agencies, departments, boards, or other entities, in furtherance of consumer protection, public health, environmental protection, increased

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transparency, public access, and preserving the ability of third parties to advocate or intervene. This measure passed the Assembly Floor by a vote of 61 to 9 on June 2, 2016, and it was referred to the Senate Energy, Utilities, and Communications Committee. However, the hearing in the Senate Committee was cancelled at the request of the author.

On June 27, 2016, Governor Brown announced the proposed reforms to the CPUC (detailed below). At that time, Assembly Member Gatto announced that he would not continue to pursue ACA 11.

Governor Brown, Legislators Announce Reforms to CPUC

On June 27, 2016, Governor Brown, Assembly Member Mike Gatto, and members of the Senate announced a package of reforms to bolster governance, accountability, transparency and oversight of the CPUC. The reforms, which reportedly have been agreed to by the CPUC, will be advanced through legislation and will likely be voted on by the Legislature before the end of the legislative session in August.

According to the Governor's announcement, the proposed reforms are organized around the following principles:

1) Governance

- Transfer the implementation and enforcement of certain transportation responsibilities (scheduled bus operations, airport shuttles, charter-party carriers, transportation network companies, household goods carriers, and other carriers subject to CPUC registration requirements) to departments within the California State Transportation Agency.
- Assess State telecommunications governance by January 1, 2018.
- Establish temporary cross-agency employee transfers between departments to foster coordinated actions and exchange of information and facilitate cultural change.
- Authorize the CPUC to hire and locate employees in San Francisco, Los Angeles, and Sacramento.
- Require CPUC voting meetings to be held in various regions of the State.
- Provide statutory authority to consider outside reports from State, Federal, and academic sources.

- Allow a commissioner to issue an Alternate Proposed Decision (APD) at any time before the CPUC votes.

2) Accountability

- Prohibit former regulated utility executives from serving on the CPUC for two years.
- Allow any California agency to participate in CPUC proceedings without official party status.
- Authorize the California Attorney General to bring an enforcement action in superior court against a decision maker or employee of the CPUC who violates the ex parte communication requirements.

3) Transparency

- Adjudicatory proceedings: maintain the current prohibition on ex parte communications.
- Quasi-legislative proceedings: allow commissioners to meet freely, particularly with members of the public, to gain perspective and become more educated on the subject area.
- Rate-setting proceedings: require commissioners and interested persons to disclose and promptly log and post the content of ex parte communications online, with penalties for untimely reporting enforced by either the CPUC or the California Attorney General.
- Allow intervenor compensation for substantial contributions in litigation, including when a party does not participate in a settlement.
- Subject the CPUC to the judicial review provisions of the California Public Records Act and revisions to improve the CPUC public records and confidentiality statute to retain confidentiality with a more timely release of public information.
- Require representatives of organizations that lobby the CPUC to register, much like the rules followed in the Legislature.
- Allow commissioners to deliberate on rate-setting proceedings, if no hearing has been held.

- Make administrative records more open in quasi-legislative proceedings by not applying the formal rules of evidence.
- Allow commissioners to discuss administrative and managerial issues in closed meetings.
- Establish thresholds for the reasonable and timely resolution of proceedings with enhanced CPUC authority to conclude proceedings in cases exceeding those thresholds.
- Ensure that the CPUC appoints all senior executive staff who report directly to the CPUC, including the Executive Director, the General Counsel, the Internal Auditor and the Chief Administrative Law Judge.

4) Oversight and Safety

- Create an Ethics Ombudsperson who any CPUC employee or member of the public can contact at any time with any concern, and who is responsible for enhanced ethics training for all CPUC staff and commissioners, on everything from gift and travel ethics to ex parte compliance.
- Codify the creation of the Deputy Director for Safety with plenipotentiary power to "red tag" any unsafe facility, process, or activity.
- Require the CPUC to work with the Nuclear Regulatory Commission to expedite relocation of spent fuel currently stored at the San Onofre Nuclear Generation Station to an independent spent fuel storage installation.
- Increase oversight of excavation and improve enforcement of dig-in safety laws.

We will continue to keep you advised.

SAH:JJ:MR
VE:AO:ma

c: Executive Office, Board of Supervisors
County Counsel